

Connecticut River Joint Commission
Attn: Sharon Francis, Executive Director
P.O. Box 1182
Charlestown, NH 03603

WATER QUALITY CERTIFICATE

In Fulfillment of

**NHDES 401 Water Quality Certification Regulations (Env-Ws 451 – 455)
and
Section 401 of the United States Clean Water Act (33 U.S.C 1341)**

401 Certificate # 2003-002

Project Name: Fort #4 Riverbank Restoration
Project Location: Charlestown, New Hampshire
Affected Waterbody: Connecticut River
Owner/Applicant: Connecticut River Joint Commission
Sharon Francis, Executive Director
P.O. Box 1182
Charlestown, NH 03603

Appurtenant Permit(s): NHDES Wetlands and Non-Site Specific Permit No.2002-01613
USACE Dredge and Fill File No. 200202884

DATE OF APPROVAL: August 8, 2003
(subject to Conditions below)

A. INTRODUCTION

The Connecticut River Joint Commissions (CRJC) proposes the installation of an eight-foot wide, 850-foot long stabilization structure along the east bank of the Connecticut River at the Fort #4 Colonade in Charlestown, NH. The structure consists of a stone berm, which will support a permanent, vegetated riparian buffer.

This 401 Water Quality Certificate (Certificate) documents laws and regulations, determinations, and certification conditions relative to the application materials submitted under letter dated July 14, 2003.

B. STATEMENT OF FACTS AND LAW

- B-1. Section 401 of the United States Clean Water Act (Title 33 U.S. Code, Chapter 26, Subchapter IV) provides that "any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate...that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title".

- B-2. Env-Ws 451-455, *401 Water Quality Certification Regulations*, effective March 6, 1995, adopted by NHDES under the authority of RSA 485-A:6, VII, provides for the implementation of Section 401 in the State of New Hampshire.
- B-3. Env-Ws 1700, *Surface Water Quality Regulations*, effective December 3, 1999, fulfills the requirements of Section 401 that the State of New Hampshire adopt water quality standards consistent with the provisions of the Clean Water Act.
- B-4. Env-Ws 452.02 defines a discharge as any addition of pollutants to the surface waters of the state, or release of water which alters the physical, chemical or biological condition of surface waters of the state.
- B-5. Env-Ws 1702.18 defines a discharge as:
- (1) The addition, introduction, leaking, spilling, or emitting of a pollutant to surface waters, either directly or indirectly through the groundwater, whether done intentionally, unintentionally, negligently, or otherwise; or
 - (2) The placing of a pollutant in a location where the pollutant is likely to enter surface waters.
- B-6. Env-Ws 1702.39 defines pollutant as dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
- B-7. Env-Ws 1702.46 defines surface waters as “perennial and seasonal streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial,” and waters of the United States as defined in 40 CFR 122.2.
- B-8. Env-Ws 1701.02 provides that the surface water quality regulations shall apply to all surface waters and to any person who causes point or nonpoint source discharge(s) of pollutants to surface waters, or who undertakes hydrologic modifications, such as dam construction or water withdrawals, or who undertakes any other activity that affects the beneficial uses or the level of water quality of surface waters.
- B-9. Env-Ws 1703.01 (c) states that all surface waters shall provide, wherever attainable, for the protection and propagation of fish, shellfish and wildlife, and for recreation in and on the surface waters.
- B-10. Env-Ws 1703.19(a) states that the surface waters shall support and maintain a balanced, integrated and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region.
- B-11. Env-Ws 455.02 (Approval Criteria) states that before a water quality certificate can be issued, the following conditions must be met:
1. All requirements of Env-Ws 454 and Env-Ws 455 have been met;
 2. All state and/or federal permits necessary for construction and operation of the project have been obtained or shall be issued upon approval of the application by the division; and
 3. Construction or operation of the project will not violate state surface water quality standards.

C. FINDINGS

- C-1. Construction and operation of the project requires Water Quality Certification under Section 401 of the Clean Water Act and Env-Ws 451.02. The U.S. Army Corps of Engineers provided public notice of this project on April 17, 2003, which satisfies the requirements of Env-Ws 454.03.
- C-2. The wetlands and river in the project area are surface waters of the state under Env-Ws 1702.46.

- C-3. Drainage from the project area to surface waters constitutes a discharge under the definitions of Env-Ws 1702.18 and Env-Ws 452.02.
- C-4. The requirements of Env-Ws 455.02 (b) have been satisfied in that the Applicant has applied for and received a State wetlands permit from the NH Department of Environmental Services. The U.S. Army Corps of Engineers Wetlands 404 Permit cannot be issued until the State issues a 401 Water Quality Certificate.
- C-5. The Connecticut River in the project area is a Class B waterway. Therefore, Class B New Hampshire surface water quality standards apply to this project. Class B waterways are considered suitable for fishing, swimming, and, after adequate treatment, as a water supply.
- C-6. Provisions for the protection of surface water resources are referenced in the application materials submitted for this Certificate. Protective measures include the installation of erosion controls and appropriate mechanisms for avoiding and controlling chemical leaks and spills associated with construction vehicles.

D. WATER QUALITY CERTIFICATION CONDITIONS

- D-1. At no time shall the construction and/or operation of this project cause the violation of Class B surface water quality standards. If it is determined that Class B surface water quality standards are being violated, additional conditions may be imposed or conditions amended by NHDES in accordance with Env-Ws 455.
- D-2. The conditions in NH Wetlands and Non-Site Specific Permit No. 2002-01613, as issued for this project, including any amendments, are considered conditions of this Certificate and must be strictly followed.
- D-3. The terms and conditions of this Water Quality Certificate may be amended and additional terms and conditions added as necessary to ensure compliance with New Hampshire water quality standards, when authorized by law, and after notice and opportunity for hearing.

E. WATER QUALITY CERTIFICATION APPROVAL

Based on the determinations and conditions noted above, NHDES hereby issues this Water Quality Certificate in accordance with NHDES 401 Water Quality Certification Regulations (Env-Ws 451– 455) and Section 401 of the United States Clean Water Act (33 U.S.C. 1341).

F. APPEAL

If you are aggrieved by this decision, you may appeal the decision to the Water Council. Any appeal must be filed within 30 days of the date of this decision, and must conform to the requirements of Env-Wc 200. Inquires regarding appeal procedures should be directed to Michael Sclafani, NHDES Council Appeals Clerk, 6 Hazen Drive, PO Box 95, Concord, NH 03302-0095; telephone 603-271-6072.

If you have questions regarding this 401 Certificate, please contact Paul Piszczek of this office at 271-2457.

Paul M. Currier
Administrator, NHDES Watershed Management Bureau

cc: Frank Del Giudice, ACOE
Charlestown Conservation Commission